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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1962

JOSEPH BERMAN, *Petitioner*

v.

GROUP HEALTH ASSOCIATION, INC.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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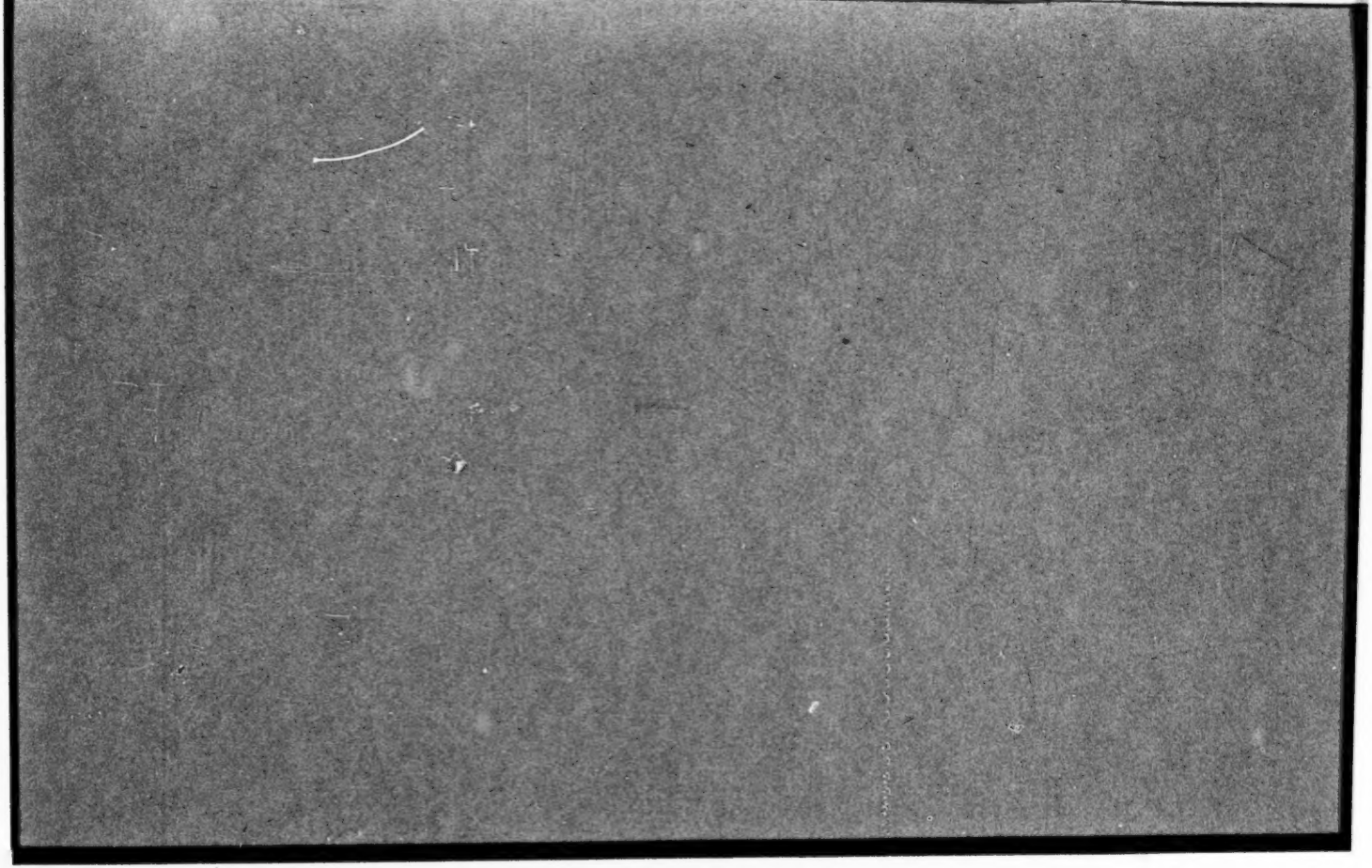

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Group Health Association, Inc. (GHA) brought this action to recover from petitioner, a member of GHA, a payment made to him by Aetna Life and Casualty Company for medical services rendered petitioner by GHA. Such recovery is specifically authorized by the by-laws of GHA:

> Any person accepting medical or dental treatment or attendance of hospitalization services procured by GHA shall be deemed by so doing to have * * *

> (5) agreed that, if the member or dependent receives benefits under an accident or health plan, other than through a plan of GHA, for services provided at GHA's expense, GHA reserves the right to obtain reimbursement from the member (and/or dependent) for the cost of the services provided (and/or reasonable value of the services provided) * * * with the proviso, however, that benefits received from such third source which are predicated solely on items of special damages (such as loss of income) which cannot be allocated to hospital and/or medical expenses shall not be subject to a claim for reimbursement by GHA; * * * *.

Article II, ¶ 2:5(5) (see Pet. App. A, p. 2).

Petitioner contends, as he did in the courts below, that the Superior Court of the District of Columbia lacked personal jurisdiction over him as a resident of Maryland, despite applicable provisions of the District of Columbia "long-arm" statute.[1] Petitioner further contends that the application of the "long-arm" statute to obtain jurisdiction over his person violates "due process" concepts (Pet. 7-12). The court below considered these issues so insubstantial as not to warrant any comment (Pet. App. A, p. 1).

Petitioner also asserts that the courts below committed error in entering and affirming summary judgment for GHA on the issue of liability. Petitioner asserts that the Seventh Amendment provides a right to trial by jury where an issue exists as to the

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[1] Title 13 *D.C. Code* § 13-423 (a)(1):

> "A District of Columbia court may exercise personal jurisdiction over a person * * * as to a claim for relief arising from the person's transacting any business in the District of Columbia * * *".

facts presented before the court (Pet. 13-15). However, as the court below correctly held, where there are no material facts to dispute the claim of a party, entry of summary judgment is justified and no violation of the Seventh Amendment arises (Pet. App. A, pp. 2-3). That situation is present here since petitioner refused to submit the GHA contract under which, he claimed, GHA had no right to recover (*Ibid.*, p. 2).

In sum, then, both of the issues petitioner seeks to present are entirely without substance, and involve issues solely of District of Columbia law passed upon by the appropriate local courts. No substantial federal or constitutional question is raised, and no decision of this Court conflicts with the holding below. The petition for a writ of certiorari should therefore be denied.

1. The present action centers on questions which are completely settled in the District of Columbia, as well as in other jurisdictions. In promulgating Title 13 *D. C. Code* § 423, the Senate Committee on the District of Columbia reported that the section

> specifically grants expanded basis of jurisdiction and modes of service identical to or reciprocal with those provided under the laws of the nearby State of Maryland for the courts of that State, and substantially the same as those provided in the adjacent State of Virginia and approximately 10 other States. [2]

This section has been afforded an expansive interpretation in both Maryland and Virginia. [3]

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[2] S. Rep. 405, 91st Cong., 1st Sess. 35 (1969).

[3] See *Gilliam* v. *Moog Industries, Inc.*, 210 A. 2d 390, 392 (Md., 1965); *Groom* v. *Margulies*, 265 A. 2d 249 (Md., 1970); *John G. Kolbe, Inc.* v. *Chromodern Chair Co.*, 180 S.E. 664 (Va., 1970).

There can be no question that sufficient contacts existed with the District of Columbia to exercise jurisdiction over the petitioner under the long-arm statute. This litigation involves a contract between the parties entered into in the District of Columbia. Petitioner was a resident of the District of Columbia and employed there when he joined GHA. The hospitalization for which GHA bore the expense, pursuant to the bylaws of GHA, was at the Washington Hospital Center in the District of Columbia. The contention that GHA, a non-profit organization incorporated and with offices in the District of Columbia, in rightfully asserting its claim against petitioner could not bring suit in the District of Columbia is completely without merit.

Petitioner's "due process" claim also borders on the frivolous. Jurisdiction under similar long-arm statutes in other states has been consistently given broad construction. *See e.g., Parke-Benet Galleries, Inc.* v. *Franklin,* 26 N.Y. 2d 13, 256 N.E. 2d 506 (Ct. App. N.Y. 1970) (long-arm jurisdiction over a California defendant upheld on the basis of a telephone call through which defendant participated in an auction); *State Ex Rel. White Lumber Sales, Inc.* v. *Sulmonetti,* 448 P.2d 571 (Ore., 1968) (long-arm jurisdiction over a Florida lumber wholesaler who made an order by telephone from an Oregon wholesaler). Such construction is authorized by *Hanson* v. *Denckla,* 357 U.S. 235 (1958), which held that jurisdiction under a long-arm statute is valid when the defendant

> purposely avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. [357 U.S. at 253].

The contacts petitioner had with the District of Columbia are certainly as substantial as those evidenced in the above New York and Oregon cases.

In addition, the question does not encompass more than the particular facts relevant to this action; the petitioner fails to proffer any substantive constitutional rebuttal of the lower courts' jurisdiction (Pet. 7-12).

2. Petitioner's other principal contention is that the lower courts improperly granted and affirmed summary judgment for GHA. Petitioner somewhat surprisingly argues that a prior District of Columbia decision failed to uphold the validity of the relevant GHA bylaw provisions. He argues that in *White* v. *Group Health Association,* 294 A.2d 870 (D.C. App., 1972), "no question was raised as to the legality of the so-called 'double coverage' bylaw" (Pet. 13). But the court in *White* expressly stated:

> It is evident that summary judgment was granted on the merits and not by reason of appellant's failure to oppose it.

294 A.2d at 871.

Similarly, petitioner's other points in opposition to summary judgment rest upon factual issues relevant only to the present case and resolved by the lower courts in favor of GHA. There can be no question that the issue of liability in this action properly resulted in summary judgment for GHA, particularly since petitioner, in opposing summary judgment, failed to submit the contract which he claims supports his position.

Although petitioner now claims that the absence of discussion in regard to the many questionable "issues" he raised reveals "error" by the lower courts, the fact is that the courts considered the issues so completely devoid of merit that it was unnecessary to discuss them in the opinion (Pet. App. A, p. 2). The findings of the court below were correct and further review is not warranted.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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